IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.Rev.Pet.No. 3682 of 2007()

CRA.506/2004 of II ADDL. SESSIONS COURT, TRIVANDRUM
CC.334/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, VARKALA

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

R.BHASKARAN, LIFT OPERATOR,
PWD MAINTENANCE SUB DIVISION, VIKAS BHAVAN,
THIRUVANANTHAPURAM.

BY ADV. SRI.T.RAJASEKHARAN NAIR
SRI.S.MANIKANTAN NAIR

RESPONDENTS: COMPLAINANT

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1. S.R.CHANDRAN, LEELA BHAVAN,
CHERUKUNNAM DESOM,VARKALA VILLAGE.

2. STATE OF KERALAL REPRESENTED BY
THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 3682 of 2007

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Dated: 15-10-2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.334 of 2002 on the file of the J.F.C.M. Court, Varkala challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following submissions in support of the revision:-

The name of the complainant is actually S. Ramachandran and not S.R. Chandran. The cheque in question was originally a signed blank cheque which the revision petitioner had given to S.R. Chandran while availing of a loan of Rs. 10,000/-. The revision petitioner had discharged the entire liability under the said transaction. But he did

not get the cheque back from S.R. Chandran whose whereabouts are not known.

5. It is true that P.W.1 admitted that he is also called S. Ramachandran. His specific stand during cross-examination was that the bank account as well as his identity card show his name as S.R. Chandran. The drawee bank also did not return the cheque for the reason that the name of the account holder is different or that his signature is different. If the contention raised by the petitioner was true, then as a reasonable and prudent man, he would have taken steps against S.R. Chandran for having parted with the cheque and made it available to P.W.1. the complainant. But, for reasons best known to him he has not even chosen to send a lawyer notice to S.R. Chandran for cheating him and betraying the confidence reposed in him. Under these circumstances, the courts below were justified in holding that the said defence set up by the revision petitioner is untenable.

6. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

7. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent complainant by way of compensation under Sec. 357 (3)

Cr.P.C. a sum of **Rs. 2,00,000/- (Rupees two lakhs only)** within **five months** from today, then he need to undergo only imprisonment till the rising of the court. If the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

8. Amount, if any, paid by the revision petitioner pursuant to the orders, passed by the lower appellate court shall be refunded to the petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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